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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

- (1) UNITHERM FOOD SYSTEMS, INC.,
an Illinois corporation; AND
(2) JENNIE-O FOODS, INC.,
a Minnesota corporation,

Plaintiffs,

-vs-

Case File No. CIV-01-347-C

- (1) SWIFT-ECKRICH, INC, d/b/a
CONAGRA REFRIGERATED FOODS,
a Delaware corporation,

Defendant.

RULE 30(b)(6) DEPOSITION OF

JENNIE-O FOODS, INC.

TESTIMONY OF JEFF DIERENFELD

SEPTEMBER 12, 2001

1:00 P.M.

COPY



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EXHIBIT N

PTO-003315

- 1 Q. And this was a telephone conversation?
- 2 A. Correct.
- 3 Q. Now, when Mr. Howard told you that he was developing this
- 4 type of process, did he explain to you what this process
- 5 was?
- 6 A. Not in any great detail, just had said that he was
- 7 working with a high heat type of an impingement process
- 8 that would allow us to get the end result that we wanted
- 9 to, and David being who he is was very confident in that.
- 10 Q. What did you mean by the phrase "David being who he is"?
- 11 A. He's a very confident person if you know David Howard.
- 12 Q. Do you know what liquid smoke is?
- 13 A. Yes.
- 14 Q. It's a liquid product that is applied to meat to either
- 15 brown the surface or provide a smoked flavor?
- 16 A. Correct.
- 17 Q. Did you have any discussions during this telephone
- 18 conversation with Mr. Howard about whether or not liquid
- 19 smoke would be used in this process?
- 20 A. I don't recall, but I'm certain that it would have been
- 21 talked about. I don't recall that in the conversation.
- 22 Q. Well, after your conversation with Mr. Howard, was it
- 23 your understanding that liquid smoke would be applied to
- 24 precooked turkey breasts which would then be placed in an
- 25 impingement oven?

- 1 Q. It was no later than '96?
- 2 A. No.
- 3 Q. Now, at some point you sent some turkey breasts to
- 4 Mr. Howard to be treated by his process and returned to
- 5 you; is that correct?
- 6 A. Yes.
- 7 Q. Did you have an understanding from Mr. Howard as to
- 8 whether or not liquid smoke would be used in connection
- 9 with treating those turkey breasts that you sent him?
- 10 A. We knew it was because he gave us on his report that he
- 11 would send back it included, you know, the length of time
- 12 or his method of applying the liquid smoke, and, you
- 13 know, what type of smoke he was using and whatnot. It
- 14 was all in the -- it was usually just a handwritten
- 15 report that they included along, and then we had that
- 16 information.
- 17 Q. Did you retain those reports?
- 18 A. I do not believe that I did. If it wasn't the product
- 19 that we wanted, we would just let him know; and I don't
- 20 believe those reports were retained.
- 21 Q. Well, let's go over then the information that was in
- 22 those reports. It told you what liquid smoke product had
- 23 been applied, correct?
- 24 A. Correct.
- 25 Q. Did it give you the concentration of that liquid smoke?

1 A. I don't recall.

2 Q. Did it tell you how the liquid smoke was applied?

3 A. I believe those reports all had a drench.

4 Q. And did the reports reveal to you that the liquid smoke
5 was applied to a precooked product which was then put in
6 an impingement oven?

7 A. The reports did not state that, but I sent him the
8 precooked product so I knew that.

9 Q. So you knew it was precooked?

10 A. Yes, I sent him the product. He sent the very same
11 product to me.

12 Q. And you knew that he had applied -- you knew from the
13 reports that he had applied liquid smoke to those turkey
14 breasts?

15 A. Correct.

16 Q. And did you know what liquid smoke had been used?

17 A. He would simply state like Red Arrow 24P select or
18 mesquite, something to that nature, one minute drench, 30
19 second drench. It would just be something of that
20 nature.

21 Q. And so liquid smoke was a Red Arrow product in at least
22 some instances?

23 A. I believe this one was, yes.

24 Q. And was the Red Arrow product known as Maillose ever used
25 for this purpose?

- 1 A. Not on any of the tests that I sent I don't believe it
2 was.
- 3 Q. But they did use a Red Arrow liquid smoke product?
- 4 A. I believe so.
- 5 Q. And do you know what I mean by pyrolysis product?
- 6 A. I've heard the term. I guess I'm not sure.
- 7 Q. Do you know whether the liquid smoke products from Red
8 Arrow that were used by Mr. Howard in connection with
9 these turkey breasts that you sent him were pyrolysis
10 products?
- 11 A. I don't know.
- 12 Q. Were they derived from wood in some instances?
- 13 A. I believe all of the liquid smokes that we use are of
14 wood derivative. I'm not certain. I'm not certain of
15 the actual makeup of the liquid smoke to be honest.
- 16 Q. In any event, you knew that Mr. Howard had started the
17 precooked turkey breasts, that he had applied a liquid
18 smoke product obtained from Red Arrow to those turkey
19 breasts.
- 20 A. Umm-hmm.
- 21 Q. And you also knew that he had put the turkey breasts in
22 an impingement oven, correct?
- 23 A. Correct.
- 24 Q. And did you know at that time that he had applied the
25 liquid smoke first and then put the turkey breasts in the